UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 16, 2024

Dr. Josh Middleton
Superintendent
Granite Falls School District Number 332
jmiddleton@gfalls.wednet.edu

Re: Granite Falls School District Number 332, OCR Reference Number 10211141

Dear Dr. Middleton:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Granite Falls School District No. 332. OCR investigated whether the District discriminated against a student (Student 1), on the basis of race, by failing to respond to a report in XXXXX of race-based harassment of Student 1 in a prompt and effective manner consistent with Title VI of the Civil Rights Act of 1964 (Title VI).

OCR investigated this complaint under its authority to enforce Title VI, 42 U.S.C. § 2000d et seq., and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, and national origin in programs and activities receiving federal financial assistance from the Department. As a recipient of federal financial assistance from the Department, the District is required to comply with Title VI.

A careful review of the evidence gathered during the investigation to date raised Title VI concerns regarding the District's satisfaction of its obligation to respond promptly and effectively to notice of a racially hostile environment at the XXXXXX. OCR is concerned that even after the District had notice of and corroborated the incident of race-based harassment, the District does not appear to have offered Student 1 supports to remedy the impact of the hostile environment. Further, the evidence indicates that the District did not take steps to determine if other students were impacted and, if so, whether the District needed to take steps to remedy the effects of the hostile environment for these students.

In conducting its investigation and making its determination, OCR considered information provided by the Complainant and the District, including documents regarding the incident of race-based harassment, the District's response, and the District's policies and procedures regarding race-based harassment. The applicable legal standards, summary of the investigation to date, and reasons for the determinations in this matter are summarized below.

Legal Standards

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. The existence of a hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race existed; (2) the recipient had actual or constructive notice of a hostile environment based on race; and (3) the recipient failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome race-based conduct that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. Harassing acts need not be targeted at the complainant to create a hostile environment. The acts may be directed at anyone, and the harassment need not be based on the complainant's or victim's race so long as it is motivated by race (e.g., it might be based on the race of a friend or associate of the victim). The harassment must in most cases consist of more than casual or isolated incidents to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the race-based harassment, as well as the identity, number, age, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe that it would have adversely affected a reasonable person, of the same age and race as the victim, under similar circumstances, from participating in or enjoying some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A school may be found to have violated Title VI if it has failed to correct a hostile environment based on harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient. Once a recipient has notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on race must be tailored to redress fully the specific problems experienced because of the harassment.

Summary of Investigation

According to data reported to the Washington State Office of Superintendent of Public Instruction, XXXXX enrolled 470 students in the 2020-2021 school year. The race/ethnicity demographics data states that the student population during 2020-2021 was comprised of 1.5% Black students, 1.9% American Indian/Alaska native, 1.3% Asian, 14.9 % Hispanic, 1.1% Native Hawaiian/Pacific Islander, and 71.7% white, with 7.7% of students identifying as two or more races.

During the XXXXX school year, Student 1 who is XXXX, was XXXXX and attended XXXXXXXXXXX. During the time relevant to this complaint, students at the middle school were on a hybrid schedule due to the COVID-19 pandemic, attending in-person classes two days a week and remote classes three days a week.

According to the complainant's written complaint to OCR, towards the beginning of May, Student 2, who is XXX, openly discussed with a friend and classmate that "he would re-enact the Columbine school shooting in detail." Student 1 overheard Student 2 make these comments in the class and Student 1 informed his parents about them. Student 1's mother reported the incident to the School. School administrators suspended Student 2 from school for the comments. According to the principal's notes, on or about XXXXXX, it was reported to him that Student 2 made comments in class to another student about bringing a gun to school and "shooting up the school." According to the principal's notes he interviewed two other students who confirmed overhearing the two students talk about guns and "bring a gun."

On XXXXXXX, Student 2 was in his English class having a conversation with another student. Student 1 sat within hearing distance of Student 2 in this class and overheard Student 2 make comments to the effect that 80% of all crimes in inner urban cities like Philadelphia were done by Black people, and that if all Black people were eradicated that the crime rate would go down.

Upon returning home after school, Student 1 told his mother of the comments made by Student 2. Student 1's mother informed OCR that she immediately telephoned the school principal (Principal) and notified him of the comments and informed the Principal that, because of the comments, Student 1 would not return to school for the remaining days of the school year because she did not think he was safe at school. In his interview with OCR, the Principal said he assured Student 1's mother that the school was responding to the incident and would keep Student 1 safe. However, the record does not indicate that the Principal provided any specific information about how the School would keep Student 1 safe. Student 1's father told OCR that Student 1 was scared by the comments and did not want to go back to school. He told OCR "I mean a month before this, that kid had threatened to re-enact Columbine, then he said that all black people should be eradicated […]…My son did not want to go back to school, and to be honest, his mother and I didn't want him to go back. Who knows what that kid is capable of doing? My son shouldn't have to be exposed to that kind of discrimination and threats."

On XXXXX, the Principal contacted the police department to report the statements reportedly made by Student 2 earlier that day. According to the police report, the police department reached out to Student 1's mother the same day and asked if Student 1 would be willing to write a statement. Student 1's mother stated Student 1 would not write a statement and would not return to the middle school in the future.

The Principal explained to OCR that due to the hybrid classroom schedule, students who attended the English class on XXXXXXXXX, including Student 2, did not return to the school in-person until XXXXXXX. That morning, the Principal spoke with Student 2 in person and Student 2 admitted making the comments and said it was a joke.

The Principal informed OCR that he also conducted in-person interviews of two students he identified, using the classroom seating chart, as having assigned seats in the immediate vicinity when Student 2 made the comments. Both students confirmed that Student 2 made the comments, including that his solution to the crime rate was to "eradicate all Black people." One of the two students said he told Student 2 to stop talking like that and walked away. The other student told the Principal, "he knew [Student 2]" and did not want to get involved, so he walked away. Neither student reported the comments prior to their interviews with the Principal. OCR found no indication the Principal attempted to determine whether any other students heard or were otherwise aware of the race-based comments made by Student 2.

The Principal also interviewed the English class teacher, who said that he was not aware of the comments by Student 2 until informed by the Principal. During the interview, the English teacher told OCR he did not hear the comments by Student 2 and no student informed him of the comments.

The Principal also spoke by telephone to Student 2's mother. According to the Principal, Student 2's mother stated that the family "make 'jokes' about different races" and that Student 2 "was just repeating what they say." According to the Principal's notes, Student 2's mother also did reference that Student 2's "comment as just stating facts ... 80% of the crime in Philadelphia is committed by blacks."

Based on his investigation, the Principal concluded that Student 1 was subjected to race-based harassment as defined by District policy. By letter dated XXXXXXXX, the Principal "emergency expelled" Student 2 from school. By letter dated XXXXXX, the Principal converted Student 2's emergency expulsion to a short-term suspension for the remainder of the school year (XXXXXXXXXXXX). The Principal also stated that Student 2 was directed to receive counseling, provided by the school, and complete a research paper prior to being allowed to return to school the next year. Student 2 completed the research paper; however, he transferred to another school district before he completed the counseling. Student 1's father told OCR that Student 1 missed at least 4 days of school. Student 1 attended the eighth-grade graduation celebration event at the school on XXXX. Student 2, who was suspended by that time, did not attend the event.

The Principal explained to OCR that he spoke with Student 1 and his parents multiple times, in person and by telephone, after the parents reported the incident, to ensure the parents were aware of the steps the Principal was taking to ensure Student 1's safety, in particular that the school had excluded the Student from school the remainder of the school year. The Principal told OCR that he also contacted the Student's parents to make sure Student 1 was "okay" and to inform them of the results of his investigation.

Student 1's father confirmed to OCR that the Principal did, at the conclusion of the investigation, inform him that Student 2 was not returning to the school that school year. Student 1's father told OCR that Student 1 did not have any contact with Student 2 after XXXXXXXXX, and did not experience any further harassment from Student 2 or any other student. Student 1's father also told OCR that his son had moved on since Student 2 made the comment and put the incident behind him.

There is no indication that, beyond excluding Student 2 from the final days of the school year, any measures were offered or taken to eliminate the hostile environment for Student 1 and other students who may have been aware of and impacted by the race-based comments.

OCR requested records from the District related to any other reports of race harassment during the 2019-2020 and 2020-2021 school years. The District reported to OCR that there were no other race-based incidents reported at the middle school during those two school years.

District Policy 3207 titled "Prohibition of Harassment, Intimidation, or Bullying" prohibits race-based harassment which includes a verbal act that "is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment." District Procedure 3207P requires that all reports of race-based harassment be investigated with "reasonable promptness." The Procedure also states that corrective measures for an offending student may include counseling, education, discipline including short-term suspensions, and/or referral to law enforcement. District Procedure 3240P, Student Conduct and Expectations, reiterates the District's prohibition of race-based harassment as referenced in Procedure 3207P.

District Policy 3210 titled "Nondiscrimination" states that "[h]arassment, based on a protected class, can be a form of discrimination when it creates a hostile environment." The Policy states that "protected class" includes race and color.

Analysis

The evidence establishes that, during a class on XXXXXX, Student 2 made comments about "eradicating Black people," and that Student 1 overheard the comments and felt scared given Student 2's earlier comments about bringing a gun to school and "shooting up the school." The evidence also establishes that the District had notice of the race-based harassing comments and that, given the severity of the comments, the comments created a hostile environment for Student 1, who was one of XXXXXXXXXXX.

OCR also found that after being notified of Student 2's comments on XXXXXXXXX, the Principal took some steps to determine what happened and address Student 2's behavior. The Principal contacted local law enforcement the same day of the incident; interviewed Student 2, two students who sat near Student 2 in the class when he made the comments, and the classroom teacher; removed Student 2 from school (both in-person and remote classes) for the remainder of the school year and required Student 2 to receive counseling and to research and write a paper. However, OCR is concerned that the District may have failed to effectively remedy the effects of the hostile environment experienced by Student 1, resulting in Student 1's limited access to education including because Student 1's parents' decided not to have Student 1 attend classes for the final days of the school year. The evidence shows that, while the Principal gave general assurances to Student 1's parents that Student 1 would remain safe at school and informed them of Student 2's removal from the school, the District did not take steps reasonably designed to remedy the hostile environment for Student 1, such as creating a safety plan or offering counseling.

OCR also has a concern that the District also may have failed to effectively respond to a hostile environment based on race for other students. While the District determined that Student 2 made race-based comments in a class and that two students who sat near Student 2 overheard the comments, the evidence does not show that the District evaluated whether additional students in the class experienced a racially hostile environment due to Student 2's comments.

Conclusion

Based on the District's willingness to address the concerns identified by OCR through a voluntary resolution agreement, OCR determined that it is appropriate to enter into an agreement to resolve the complaint under Section 302 of the OCR Case Processing Manual (CPM) (available at https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf), The District signed the attached Resolution Agreement, which when fully implemented, will address the violation identified by OCR.

The Resolution Agreement includes, among other provisions, a requirement that the District review and revise, as necessary, its written policies and procedures related to race-based harassment to ensure responses to a hostile environment be tailored to redress fully the specific problems experienced as a result of the harassment to include supportive measures; conduct training for all District school principals on the revised policies and procedures; and providing a copy of the revised policies and procedures to the Complainant.

OCR will monitor the District's implementation of the Resolution Agreement. Upon the District's compliance with the terms of the Agreement, and with Title VI and its implementing regulation at 34 C.F.R. Part 100 in the case, OCR will close the case. As noted in the Resolution Agreement, the District's first monitoring report to OCR is due by July 31, 2024.

This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

This concludes OCR's investigation of this complaint. The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about this letter, please contact Stephanie Augdahl, the attorney assigned to the complaint, at (202) 453-6452 or at stephanie.augdahl@ed.gov.

Sincerely,

Paul Goodwin
Supervisory Attorney

Enclosure

cc: Dunkan K. Fobes, counsel for District (via email to dkf@pattersonbuchanan.com)